

other employment or may be engaging in activities which would indicate less than total disability). Further, the agency has the responsibility to submit to the Office at any time all relevant and probative factual and medical evidence in its possession or which it may acquire through investigation or other means. All evidence submitted will be considered and acted upon by the Office as appropriate, and the Office will inform the claimant, the claimant's representative and the employing agency of such action. In those instances where an employing agency contests a claim at time of initial submission and the claim is subsequently approved, the Office will notify the agency of the rationale for approving the claim.

[52 FR 10513, Apr. 1, 1987]

§ 10.141 Representation of the Director.

The Director shall be represented in proceedings with respect to any claim conducted before the Employees' Compensation Appeals Board (ECAB) by attorneys from the Office of the Solicitor of Labor.

[52 FR 10513, Apr. 1, 1987]

§ 10.142 Representation of claimants.

Any claimant may appoint an individual to represent his or her interest in any proceeding for determination of a claim under this part. Such appointment shall be made in writing or on the record at the hearing. A written notice appointing a representative shall be signed by the claimant or his or her legal guardian and shall be sent to the Office. In any case such representative must be qualified under § 10.143.

§ 10.143 Qualification of representative.

(a) *Attorney.* Any attorney in good standing who is admitted to practice before a court of a State, territory, district, or insular possession or before the Supreme Court of the United States or other Federal court and is not, pursuant to any provision of law, prohibited from acting as a representative may be appointed as a representative.

(b) *Other person.* Any other person with the approval of the Office may be appointed as a representative so long as that person is not, pursuant to any provision of law, prohibited from acting as a representative.

§ 10.144 Authority of representative.

A representative, appointed and qualified as provided in this part, may make or give on behalf of the claimant any request or notice relative to any proceeding before the Office under the Act, including hearing and review. A representative shall be entitled to present or elicit evidence and to make allegations as to facts and law in any proceeding affecting the claimant and to obtain information with respect to the claim to the same extent as the claimant. Notice to any claimant of any administrative action, determination, or decision, or request to any party for the production of evidence shall be sent to the representative, and the notice or request shall have the same force and effect as if it has been sent to the claimant.

[52 FR 10513, Apr. 1, 1987]

§ 10.145 Fees for services.

(a) No fee for representation services rendered in respect to a claim under this part shall be valid, unless prior approval of such fee has been obtained from the Office.

(b) The fee approved by the Office will be determined on the basis of the actual necessary work performed and will generally include but are not limited to the following factors:

(1) Usefulness of the representative's services to the claimant.

(2) The nature and complexity of the claim.

(3) The actual time spent on development and presentation of the claim.

(4) The amount of compensation accrued and potential future payments.

(5) Customary local charges for similar services.

(6) Professional qualifications of the representative.

(c) In every case where a representative's fee is desired, an application for approval of the fee shall be made to the Office. The application should be made when the representative has submitted the final piece of information believed

necessary for the adjudication of the claim. Each request for approval of a fee shall be accompanied by a complete itemized statement, in duplicate, describing the services rendered. Such itemization shall contain the following information:

(1) The dates that services began and ended in addition to all dates on which conferences were held, documents or letters prepared, telephone calls made, etc.

(2) A description of each service rendered with the amount of time spent on each type of service.

(3) The amount of the fee which the representative desires for services performed.

(4) The amount of fees requested, charged or received for services rendered on behalf of the claimant before any State or Federal court or agency, in a similar or related matter.

(5) A statement explaining the basis for the amount of the fee requested.

(d) The representative shall arrange for the claimant to review the request for a fee and to comment as to the services provided and as to the reasonableness of the fee. The claimant's written comments should accompany the application for approval of a fee submitted to the Office.

(e) In considering any request for such a fee, the Office will not recognize such items as:

(1) Work performed before any other State or Federal agency or court including the Employees' Compensation Appeals Board, and any State or Federal Court.

(2) Any contract for the payment of an agreed sum or any contingent contract.

(3) Expenses incurred by the representative for services performed.

(f) The Office will not pay or assist in the collection of any representative fee. Neither will compensation payments be routinely forwarded to the representative with or without the claimant's approval.

(g) Any claimant aggrieved or adversely affected by an award of a fee may request a hearing or reconsideration by the Office, or may request review by the Employees' Compensation Appeals Board.

(h) A representative aggrieved or adversely affected by an award of a fee may request review by the Employees' Compensation Appeals Board.

(i) Any person who receives a fee, other consideration or gratuity on account of services rendered with respect to a claim under this part, unless approved by the Office, or who solicits employment for himself or another in respect to a case or claim under (or to be brought under) this Act shall be guilty of a misdemeanor under 18 U.S.C. 292 and upon conviction of each offense, will be punished by a fine of not more than \$1,000 or imprisoned not to exceed 1 year, or both. Utilization of an escrow deposit of funds by a representative for the deposit of a client's funds, prior to approval by the Office of the representative's fee, is not considered receipt or collection of a fee by the representative; provided, the escrow deposit of funds is one made by the claimant/client into the hands of a third party to be held by that third party until receipt of the Office's approval of the representative's fee, and then delivered by the third party to the representative in accordance with the decision of the Office and the provisions of the escrow agreement.

(Approved by the Office of Management and Budget under control number 1215-0115)

[40 FR 6877, Feb. 14, 1975, as amended at 47 FR 145, Jan. 5, 1982; 52 FR 10513, Apr. 1, 1987]

§§ 10.146—10.149 [Reserved]

§ 10.150 Statement relative to substantive rules.

(a) The principal function of the Office and its subordinate parts is that of adjudicating claims for workers' compensation. This function is quasi-judicial in character and involves the application of statutes and principles of law to resolve factual situations. This field of activity is within the specialized branch of the law generally referred to as "workers' compensation," and has its own particularized principles which have general applicability to workers' compensation statutes (State and Federal), as such statutes have certain common or underlying similarity in respect to the meaning of terms and phrases, and in respect to